

CANADA / JUDGMENT

L.J.W. v. R.A.O.

2026 BCSC 261

COURT

Supreme Court of British Columbia

DECIDED

13 February 2026

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2026 BCSC 261 L.J.W. v. R.A.O

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.J.W. v. R.A.O.,

2026 BCSC 261

Date: 20260213

Docket: E233145

Registry: Vancouver

Between:

L.J.W.

Claimant

And:

R.A.O.

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraphs 240, 261 and 262 on March 16, 2026.

Before: The Honourable Justice Lawn

Reasons for Judgment

The Claimant, appearing in person:

L.J.W.

The Respondent, represented by counsel and appearing in person:

A. Awaysheh

(September 9, 2025)

R.A.O.

(Remainder of Trial)

Place and Dates of Trial:

Vancouver, B.C.

September 8-10, 12, 15-19,

24-26, 29, and

October 1-2, 2025

Written Submissions of the Claimant Received:

October 2, 2025

Place and Date of Judgment:

Vancouver, B.C.

February 13, 2026

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Introduction

- [1] While visiting New York City in 2015, the respondent met the claimant, who was working there. They began corresponding and, eventually, dating. They were married in B.C. on September 2, 2017 and separated on May 7, 2023. Their child, Z, was born in 2018 and has, since March 28 2024, resided roughly half of the time with each parent.
- [2] The claimant wishes to move back to the U.S. with Z, where she submits she has better job opportunities and family support including childcare provided by Z's grandmother. The claimant emphasizes the economic, social, and community-based benefits available to her in New Jersey, which she argues will allow her to thrive as an individual and thus as a parent. The claimant also highlights her primary role in Z's care over Z's lifetime; the respondent's history of family violence; and the fact that New Jersey is a more diverse community than Whistler, B.C., which will benefit Z as she is of mixed race.

- [3] The claimant seeks child support and retroactive spousal support. If she is not permitted to relocate with Z, she also seeks spousal support going forward.
- [4] The respondent opposes the relocation. He also contests the majority of the spousal support claim and points to the hardship that payment of such support will cause, given his commitments to his two children from a previous relationship. Both parties seek to impute income to the other, based on work capacity that is not being pursued.
- [5] Property division issues include whether a home in Hawaii, held in joint tenancy by the respondent and his stepmother, is family property. Also at issue are the claimant's pre-relationship investments, which grew in value during the marriage.

Procedural Issues

- [6] This was initially scheduled as an eight-day trial. While the respondent began the trial with counsel, he represented himself after the first day. The claimant was self-represented throughout. The eventual trial took 15 days.
- [7] Near the beginning of the trial, I alerted both parties that I would require written closing submissions. I provided printouts of materials to assist in their preparation. I augmented these resources throughout, and gave suggestions as to how to simplify the process as well as opportunities for questions. Despite this, the respondent informed the Court on the last day of trial, that he had not completed written submissions. The claimant had prepared submissions, which she provided to the Court and to the respondent, and from which she spoke when delivering her oral closing.
- [8] During his oral submissions on closing, it became apparent that the respondent had, in fact, prepared materials from which he was reading. He agreed to provide a copy to the Court and to the claimant. It appeared that, in withholding his written submissions until directly asked about them by the Court, the respondent was attempting to avoid or at least delay providing his position to the claimant, perhaps in the hopes of gaining a strategic upper hand. This impression was strengthened by his refusal of the Court's offer to grant him more time to finalize his argument, thus suggesting that he had come prepared with court-ready written submissions after all.
- [9] To ameliorate any unfairness caused by this turn of events, I allowed the claimant several days to prepare further written submissions in reply, which also served the purpose of avoiding yet another day of court time, in a trial that had already almost doubled in length.
- [10] All of this led to a great deal of written material being generated. I have reviewed and considered all of the parties' submissions. In these reasons, however, I will focus on the facts and the law most directly relevant to the decisions I must make: *K.C.M. v. S.J.S.*, 2023 BCSC 435 at para. 9.

[11] Where submissions were repetitive, I have disregarded any duplication. Where matters not led or addressed at trial were presented as evidence, I have disregarded them.

Overview

[12] As will be seen below, I have found that relocation to New Jersey with the claimant is in Z's best interests. I have imputed or attributed more income to the respondent than he argued for, but less than the claimant urged. There was a small past overpayment of child support. I agree with the respondent that the Hawaii property is not properly classified as family property. The respondent will owe the claimant a payment to equalize the family property. The claimant had an entitlement to modest spousal support on a compensatory basis, for two years following the breakdown of the marriage.

Issues

[13] The issues before the Court are:

- a) Credibility and reliability;
- b) Relocation;
- c) Imputation of income;
- d) Spousal support;
- e) Child support;
- f) Property division;
- g) Other orders sought; and
- h) Costs

[14] I will address the parties' positions on credibility and reliability before turning to the substantive issues.

Credibility and reliability

[15] Each party had credibility concerns with the witnesses on the other side. The claimant pointed out that the respondent contradicted himself throughout his testimony, belittled and laughed at her, was evasive, and failed to follow a procedural direction from the Court. She also submitted that his mother, A.S., was hostile towards the claimant and had a financial interest in the outcome of the trial. Finally, she submitted that the reliability of the respondent's stepfather, A.P., as a witness was compromised by his lack of knowledge about the respondent.

- [16] The respondent submitted that the claimant's family members were not reliable witnesses as they only visited Z for short periods of time, during which he argued there may have been short-term shifts in family dynamics. In contrast, he submitted that A.S. was the witness who had observed the family the most of all the witnesses, thereby implying that her testimony should be viewed as more reliable. He did not make any submissions about his own credibility or reliability, nor of the credibility or reliability of the claimant or of A.P.
- [17] Some of the areas of conflicting evidence concerned issues that were not material to the matters I must decide, such as the reasons for marital breakdown or the family dynamics during certain periods. I therefore need not resolve every such conflict.
- [18] Unfortunately, the way in which the respondent testified and conducted himself at trial undermined the reliability of his view and, at times, gave rise to a concern about his objectivity. In this regard, this case is somewhat similar to *Joseph v. Washington*, 2021 BCSC 2014 at paras. 86-91, although, of course, each case turns on its own facts.
- [19] Occasionally, the respondent was confrontational, derisive, or belittling of the claimant or of her family members in response to fair questioning on cross-examination or while cross-examining others. Examples included laughing and rolling his eyes during the claimant's testimony, cutting off witnesses, including the claimant's mother, S.W., and making sarcastic comments during his cross-examination such as, "So this is how its' going to be" while laughing and scoffing, requiring repetition of the question to which he clearly was not listening, as it was clearly and calmly spoken.
- [20] The claimant also occasionally allowed emotion to conquer appropriate courtroom demeanor, in particular during the later stages of her cross-examination of the respondent. She was at times evasive in answering the respondent's questions on cross-examination, although both parties occasionally strayed in their questioning, to matters more properly classified as argument. When reminded, they very properly reframed their questions.
- [21] I am conscious of the fact that these parties have operated for some months without the benefit of counsel. They tried to comply with the rules and the Court's instructions, while obviously motivated by deep-seated love for their child. It would be unusual for parties in their positions to be able to set emotion entirely aside and act as dispassionate advocates while at the same time essentially fighting for a future that they each envision. I have endeavoured to take this into account when weighing their evidence and making assessments as to reliability and credibility.
- [22] As noted, several members of each party's family also gave evidence. Once again, their love and care for Z was obvious. It was clear, however, that these family members were all polarized around the positions taken by the parties, at least to some degree. They were careful to put their evidence in the best light possible for their respective family member. I have taken this natural tendency into account when giving weight to the family members' evidence.

- [23] I will address specific instances of conflicts in the evidence where it is necessary in the analysis which follows. Many of the specific examples around Z and the family's time with her, were not contradicted.

Relocation

- [24] In *Link v. Lenskyj*, 2022 BCCA 341 at para. 2, Justice Fenlon observed that relocation decisions are among the most difficult determinations that judges are asked to make. For parents, the situation is, of course, far more difficult. This case is no exception. It involves two loving parents of a young child who has grown up with the benefit of both of them in her life, in particular over the last two years when, partly by court order and partly by agreement, they have shared roughly equal parenting time. The parties are also to be commended for keeping Z out of the fray and contributing to her childhood to the best of their ability throughout what has, no doubt, been one of the most trying periods of their lives. I have not lost sight of these factors. If anything, the parties' dedication to their child and their clear intentions to act in her best interests only make this difficult decision more difficult.
- [25] Nevertheless, my task is to review the evidence adduced at trial in light of the statute's detailed list of factors, in order to arrive at a decision which most closely aligns with what I find to be the best interests of Z.

Legal Framework

- [26] In her Notice of Family Claim filed on December 7, 2023, the claimant sought an order pursuant to s. 16.91(1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA], permitting her to relocate with Z. The notice did not state a destination. In a Notice of Application dated January 9, 2025, the claimant applied for an order by summary trial that she be permitted to relocate with Z from Whistler to New Jersey as of March 31, 2025, on a final basis or, in the alternative, on an interim basis. This application was unsuccessful, the court determining that the matter was not appropriate for summary trial.
- [27] In final submissions, the respondent said that proper notice of relocation was provided to him in December 2024, albeit to the wrong municipality.
- [28] I observe that the claimant is not seeking to unilaterally relocate: she seeks a court order to relocate. Therefore, the procedural requirements of s. 16.9 of the DA do not apply: *A.J.L. v. J.G.L.*, 2021 BCSC 2429 paras. 37-41, aff'd 2022 BCCA 341. I also find, as Justice Hori did in *A.J.L.*, that there has been substantial compliance here in any event, and if it were required, I would rely on s. 16.9(3) of the DA to dispense with the notice provisions.

- [29] The question of which Act applies was not addressed in the summary trial decision but did not appear to be in dispute before me. In any event, in *Hejzlar v. Mitchell-Hejzlar*, 2011 BCCA 230 at para. 20, Justice Saunders held that the DA is the preferable basis for consideration of child mobility cases, where available, and her decision in this regard has been followed many times by this Court.
- [30] Section 16 of the DA mandates that, in making a parenting order such as this, I must consider only the best interests of the child. It also sets out multiple factors which must be considered in this evaluation. The DA provides:

Best interests of child

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

Primary consideration

- (2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

Factors to be considered

- (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
 - (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
 - (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
 - (d) the history of care of the child;
 - (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
 - (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
 - (g) any plans for the child's care;
 - (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;

- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- (j) any family violence and its impact on, among other things,
- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
- (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

[31] Section 16.92(1) sets out additional factors where relocation is at issue.

Best interests of child -- additional factors to be considered

16.92 (1) In deciding whether to authorize a relocation of a child of the marriage, the court shall, in order to determine what is in the best interests of the child, take into consideration, in addition to the factors referred to in section 16,

- (a) the reasons for the relocation;
- (b) the impact of the relocation on the child;
- (c) the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons;
- (d) whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement;
- (e) the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;
- (f) the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses; and
- (g) whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance.

[32] In *Barendregt v. Grebliunas*, 2022 SCC 22, in the relocation context, Justice Karakatsanis observed:

- [8] Determining the best interests of the child is a heavy responsibility, with profound impacts on children, families and society. In many cases, the answer is difficult -- the court must choose between competing and often compelling visions of how to best advance the needs and interests of the child. The challenge is even greater in mobility cases. Geographic distance reduces flexibility, disrupts established patterns, and inevitably impacts the relationship between a parent and a child. The forward-looking nature of relocation cases requires judges to craft a disposition at a fixed point in time that is both sensitive to that child's present circumstances and can withstand the test of time and adversity.
- [9] The law relating to the best interests of the child has long emphasized the need for individualized and discretionary decision making. But children also need predictability and certainty. To balance these competing interests, the law provides a framework and factors to structure a judge's discretion. This case calls on the Court to examine how some of those considerations apply in mobility cases. In particular, I clarify that a moving parent's reasons for relocation and the "maximum contact factor" are relevant only to the extent they bear upon the best interests of the child; a parent's testimony about whether they will move regardless of the outcome of the relocation application should not be considered; and family violence is a significant factor impacting the best interests of the child.
- [33] I have kept these instructional paragraphs in mind in the analysis which follows.
- [34] The question of who has the burden of proof in a relocation matter depends in part on the parenting arrangements in place. The DA states:

Burden of proof -- person who intends to relocate child

16.93 (1) If the parties to the proceeding substantially comply with an order, arbitral award, or agreement that provides that a child of the marriage spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child.

Burden of proof -- person who objects to relocation

- (2) If the parties to the proceeding substantially comply with an order, arbitral award or agreement that provides that a child of the marriage spends the vast majority of their time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child.

Burden of proof -- other cases

- (3) In any other case, the parties to the proceeding have the burden of proving whether the relocation is in the best interests of the child.

Power of court -- interim order

16.94 A court may decide not to apply subsections 16.93(1) and (2) if the order referred to in those subsections is an interim order.

- [35] By placing the burden on the relocating parent, s. 16.93(1) grants deference to the order or agreement in place. In deciding whether to afford such deference, the court can consider how long the interim order has been in place; whether it reflects a long-term status quo which existed prior to its pronouncement; or whether it was made at a time when the relocating parent's intention to relocate was known: Link at paras. 21-24. Interim orders are generally designed to be short-lived until the best interests of the child can be fully determined at trial: Link at para. 22.
- [36] The order in place is an interim order supplemented by an agreement by the parties to allow the respondent an additional full weekend with Z per month. The parties thus have substantially equal parenting time of Z. If I understand the claimant's position correctly, she has conceded that she bears the burden of proof. Thus, I need not consider whether the interim order and agreement in place ought to be given deference.
- [37] If I have misunderstood the claimant's concession, I will go on to briefly consider the burden of proof analysis.
- [38] In this case, by the time of trial, the interim order and subsequent alteration by agreement granting the parties substantially equal parenting time had been in place for over a year. Prior to that, the parenting history indicates that more of the child's care was provided by the claimant, although the respondent disputes the appropriateness of giving her the label of "primary caregiver." There was also a period of time post-separation when the respondent was unable to exercise any parenting time. I have discounted that time in the analysis.
- [39] The respondent submitted that, despite being an interim order, it was made after due consideration and was supported by substantial submissions from both parties, who were represented by counsel at the time. On the other hand, the claimant advised of her intention to relocate in her December 2023 Notice of Family Claim, so all interim steps were taken with that possible future relocation in mind.
- [40] In the circumstances, should it have been necessary, I would decline to exercise my discretion under s. 16.94 of the DA to depart from the burden of proof as described in s. 16.93(1), notwithstanding that the order in place was an interim one. The order was made on the respondent's application after Associate Judge Hughes heard from both parties' counsel. This is an international move across the continent and upsets a stability that, though not particularly long-lived, appears to have been working well for some time. In my view, it is appropriate that the claimant bear the burden of showing that relocation is in Z's best interests, notwithstanding the interim nature of the current status quo.
- [41] There are a combined 18 factors under ss. 16(3) and 16.92(1) of the DA which I must consider in determining whether relocation is in Z's best interests. Not all factors will be relevant in every case: I have not discussed those factors which are irrelevant on the facts here.

- [42] The court must not consider whether, if relocation is not permitted, the claimant would move nonetheless: DA, s. 16.92(2). This is to prevent a flawed line of reasoning which is sometimes referred to as the "double-bind", in that it adopts a status quo disposition as being in the best interests of the child by assuming that the relocating parent will not move if not permitted to do so with the child or the non-relocating parent will move if the relocation application is granted: *Fotsch v. Begin*, 2015 BCCA 403 at para. 80.
- [43] Accordingly, although some questions were asked about the claimant's intentions should the relocation not be permitted, I have not considered that evidence in the analysis which follows.
- [44] I will deal with the evidence and argument under each of the relevant factors in turn, beginning with the s. 16.92(1) relocation factors.

The Relocation Factors (s. 16.92)

Reasons for relocation (s. 16.92(1)(a))

- [45] The claimant's reasons for relocation are that it will provide Z with stable housing and regular exposure to a diverse community of people who look like her, and it will improve the claimant's circumstances which will in turn benefit Z. More specifically, the claimant submitted that a move to New Jersey would provide her with more financial and emotional support, as well as increased opportunities to pursue lucrative employment and to further her education. I will return to the issue of race below. I find that the claimant's reasons are put forward in good faith and well supported by the evidence.
- [46] In *B.M.W.G. v. J.W.G.*, 2022 BCSC 1346 at para. 99, Justice Kirchner affirmed that that a parent's mental and emotional well-being is an established factor in considering the best interests of the child in a relocation. This is because a move that improves the parent's circumstances--either by enhancing their education, employment opportunities, and economic stability or by increasing their access to family and community support--can help them cultivate a healthy, supportive, and positive environment for their child: *Barendregt* at paras. 169-172. So long as the analysis remains focused on the child's best interests, the court can consider the parent's needs "to the extent that they [are] relevant to the children": *Barendregt* at para. 174.
- [47] The claimant's father, M.W., expressed concern that the claimant is being driven into poverty and suffers from a lack of opportunity and freedom, which directly impacts Z's well-being and could also send a harmful message about Z's own identity in terms of gender and race. The claimant's sister, L.Y.W., and S.W. had similar concerns. The high cost of living in Whistler only exacerbates this problem. M.W. testified that if the relocation were to occur, the claimant's family would provide support by way of housing, groceries, and childcare such that the claimant would be able to re-establish herself financially, professionally, and academically should she so choose.

- [48] The claimant has two job offers in hand, should she relocate to New Jersey: both through connections. One from her own family, for 20 hours per week at \$30 per hour, and another from a doctor who gave evidence at trial as to his need for office staff and his conditional offer to the claimant. These opportunities are not available to the claimant in Whistler, where she has no similar connections. Her job searches in Whistler were detailed in evidence and have borne little fruit. As will be detailed below she works several part-time positions.
- [49] The respondent has offered many suggestions for the claimant's employment including that she take up modeling again, which she did when she lived in the US prior to the marriage; or commute to Vancouver for more employment opportunities. He has also suggested at least since separation, if not before, that the claimant accept employment as a waitress in a restaurant owned by his close friend who gave supporting evidence in that regard. This job prospect was a key focus of evidence at trial and of the respondent's submissions. The respondent's friend confirmed that he and the respondent see or speak to each other between three and five times per week. They have known each other for many years and the respondent's mother taught him to ski when he was nine years old. There is no dispute around the availability of this job, and that the friend would be pleased to facilitate the claimant's employment. In the respondent's view, the employment is ideal.
- [50] The claimant does not want to work as a restaurant server for her ex-spouse's close friend. I find that the claimant's refusal to accept this employment is reasonable in the circumstances. The evidence at trial was that if the claimant took this job, the respondent's friend would have access to her wages and employment information. Even apart from this element, however, restaurant work is not ideal for a single parent without access to, for example, family support for evening childcare, as the claimant testified. I accept that it would require shifts to be arranged solely on the claimant's non-parenting evenings, which would certainly not amount to full-time hours in any event.
- [51] The claimant detailed her struggle for housing starting in May of 2023. I will return to the specific issues around the period of sharing of the former family home ("FFH") below. I also find that the claimant made thorough and reasonable efforts to obtain housing in Whistler upon the breakdown of the marriage. For a time, she obtained temporary housing through a women's centre, and was able to get on a list for subsidized housing through the Whistler Housing Authority ("WHA"). When her 20-hour per week position in Whistler ended in May 2025, however, she was no longer eligible for WHA housing. She had previously been on their waitlist (for example, in the spring of 2025, she was 698th on the waitlist for a one-bedroom apartment) but was unable to rejoin the waitlist when she lost her job. She eventually found housing in Squamish through word-of-mouth, and she pays \$2,150 per month. The claimant has no prospects to obtain housing closer to Whistler, nor to save up to be able to own a home, as the respondent does. The claimant testified that the respondent offered his mother's house to her, partly shared with guests, as well as other housing options where he had connections to the owners.

- [52] I do not accept that these offerings constitute valid housing options. In fact, they support the claimant's opinion that being an "insider" in Whistler, with friends and connections, is an advantage that the respondent and his family have, and that the claimant does not.
- [53] I find that the claimant's housing and employment-based reasons to relocate to New Jersey are sincere, valid, and accord with Z's best interests. It is in Z's best interests to have two parents who can thrive financially and professionally. The benefits that the claimant would obtain from the relocation would extend to Z, who would grow up seeing both her parents thrive, rather than just one. The claimant's ability to access free childcare and support from her family members constitutes a tangible and valuable consideration in the overall analysis of this factor. She has two firm job prospects available to her that are of a better pay and quality than the non-permanent and scattered hours she has been able to pick up in Whistler. Further, the claimant's goal of returning to school for additional education and training would be much more realistically achieved in New Jersey, where she has family support, compared to Whistler.
- [54] This factor weights in favour of relocation.

Impact of relocation (s. 16.92(1)(b))

- [55] Several witnesses gave evidence about the anticipated impact of the relocation on Z.
- [56] L.Y.W. observed that having access to New York and New Jersey would broaden Z's horizons, which would be important to her as a child with a variety of talents and passions.
- [57] On the other hand, A.P. expressed concern about the current political polarization in the U.S. This was a theme repeated by A.S. I did not hear any specific evidence as to how the current political situation in the U.S. was likely to impact Z, but A.S. spoke to the possibility of border detentions for family members, and stated that she and A.P. would not be visiting in the U.S. I accept that there is the possibility, at least, of the current political situation in the U.S. having an impact on Z or her family members within their community and/or at the border.
- [58] The relocation would impact Z's relationships with her grandparents, A.S. and A.P., since she would no longer live nearby and A.S. and A.P. refuse to visit the U.S. However, they live in Whistler for half of the year, which already limits their time with Z. In contrast, relocation would strengthen Z's relationships with her maternal grandparents, M.W. and S.W., and other members of the claimant's family.
- [59] A.P. testified as to his concern about Z's lack of access to the respondent, should relocation be permitted. He fairly acknowledged that while the claimant's parents are part of a wonderful family that Z would be part of, a reduction in the amount of time that Z can spend with the respondent would have a significant impact on her. As in B.M.W.G. at para. 107, Z's loss of easy access to her dad is the most detrimental impact of the proposed relocation.

- [60] The respondent argued that the claimant has failed to come to grips with the disruption that a move would inevitably cause in his relationship with Z. He argues that Z's best interests require that a parent recognize that geographic distance will inevitably impact the relationship between that parent and the child, citing Barendregt. I agree with the respondent on the significance of this impact, which is also well articulated by the Supreme Court of Canada in Barendregt at para. 8. In my view, however, the claimant has gone some way towards acknowledging this reality, in that she has carefully constructed a generous plan to facilitate Z's travel as well as access for the respondent in New Jersey. This, in and of itself, is some recognition of the efforts which will need to be made in order to preserve the strength of the relationship between Z and the respondent as much as possible. I will return to the details of this plan below, as in my view it must be altered to provide additional time for the respondent.
- [61] Several witnesses mentioned Z's time spent skiing. Whistler is a ski-focussed community and therefore, if she relocates, the respondent submits that Z will ski less than she would in Whistler. No evidence was led as to the availability of skiing near the relocation community in New Jersey, however, and so while I have taken the strong skiing culture in Whistler into account, I have not made a finding that Z. could never ski in New Jersey.
- [62] I observe, however, that skiing is more than a sport for the respondent's family, all of whom testified as to their history in the ski community and/or current time spent on ski activities. The evidence of ski days, photographs and the time spent by the family skiing indicates that it constitutes family bonding time. I find that reducing Z's time skiing in Whistler will have a negative impact on her, partially mitigated by the claimant's proposed arrangement in which Z would spend her winter and spring breaks in Whistler with the respondent.
- [63] Finally, the claimant submitted that although Z would have to adjust to the relocation, she is young enough to experience an easier transition to a new school, friend group, and extracurricular activities: *Hefter v. Hefter*, 2016 BCSC 1504 at para. 68. I find that Z is likely to do well in schools in New Jersey as she has in Whistler, after a brief adjustment period.
- [64] I find that on balance, however, this factor weighs against relocation. The negative impact on Z's relationship with her father and paternal grandparents, the reduction in Z's skiing time, and the potential impacts of the political situation in the U.S., are somewhat balanced out by the brief nature of Z's expected adjustment period, the opportunities available to her in New Jersey and/or New York, and the positive impact that relocating will have on her relationship with her maternal grandparents and aunt. However, the most significant negative impact on Z will be the reduced opportunity for parenting time with the respondent. It looms large.

Amount of time and level of involvement (s. 16.92(1)(c))

- [65] I will assess this factor along with my examination below of the history of Z's care and the ability and willingness of the parties to care for and meet her needs (s. 16(3)(d)), as there is some overlap between these two factors.

Reasonableness of relocating parent's proposal (s. 16.92(1)(f))

- [66] This factor asks the court to examine the relocating parent's plan, with a view to factors such as parenting time, decision-making responsibility or contact, the location of the new place of residence and the travel expenses
- [67] The claimant's plan if relocation is granted consists of her sharing decision-making responsibility for Z with the respondent and arranging for Z to travel to Whistler to spend her winter breaks, spring breaks, and six weeks of her summer breaks with the respondent. The claimant would cover the travel costs associated with these visits. Further, the claimant's plan offers the respondent the ability to have Z in his sole care in New Jersey for three long weekends every year, and to request additional weekends throughout the year in New Jersey. The claimant also commits to daily FaceTime calls.
- [68] L.Y.W. and S.W. both testified as to their willingness to facilitate and support the respondent's parenting time, from helping with FaceTime calls to hosting the respondent in their home and lending him a car during his New Jersey weekends, to traveling with Z to B.C. I view this as significant given the distance between Whistler and New Jersey, at least until Z is old enough to fly alone. The claimant has also offered to pay for M and K, who are the respondent's teenaged children from his former relationship, to visit once per year until they are 24, which S.W. confirmed in her testimony.
- [69] I accept the respondent's submission that he will not be able to put work aside during the entirety of his condensed parenting time. The parties may need to pay for childcare during this time, a point I will return to below.
- [70] I also accept the respondent's point that as Z grows older, her ties to New Jersey will deepen, and those to Whistler may attenuate. This was not in evidence, but I accept the general submission that many children become more tied to school and friends as they enter their teen years. I acknowledge the possibility that if this occurs with Z, she may resist spending time in Whistler. But this is only a possibility. Should the parties be unable to agree--for example, to an alteration to the schedule during Z's teenaged years, to allow Z to participate in a summer activity she wishes to do in New Jersey--they are free to return to court for an application to vary the parenting time. This may include the respondent seeking to change the financial arrangements so as to facilitate more parenting time for him in New Jersey during his holidays, for example. In short, the possibility of Z's preferring New Jersey over Whistler during school holidays at some point in the future, does not undermine the reasonableness of the proposal overall.

- [71] I find that the claimant's proposal is reasonable and generous in the circumstances as it provides the respondent with as much parenting time as could be reasonably provided without requiring excessive travel on the part of Z. It provides that the majority of the travel costs will be covered by the claimant: *Burton v. Carter*, 2022 BCSC 2004 at para. 77. As noted below, I would add an additional summer week of parenting time with the respondent, and adjust downwards, the amount of parenting time for the claimant during the summer, in order to facilitate, for example, the respondent spending time with Z in Gibsons at his mother's summer home
- [72] On balance, this factor weighs in favour of relocation.

Compliance with orders and agreements (s. 16.92(1)(g))

- [73] The respondent reduced the amount of child support he was paying from \$715 to \$470 starting in April 2024 without a court order or the claimant's agreement, although he sought her agreement given that the parties had moved to a shared parenting arrangement.
- [74] On the other hand, the respondent gave some evidence that the claimant did not initially facilitate four hours of his parenting time after the December 2023 provincial court order. This period, however, seemed to be fairly short-lived. In addition, the complainant relocated from Whistler to Squamish without giving notice as per s. 16.8 of the DA. I observe that these requirements may be modified by application, under s. 16.8(3), including where there is a risk of family violence. No such application was made by the claimant. In a more troubling occurrence, the claimant booked a medical appointment in New Jersey, without first obtaining the respondent's consent. She explained that she was worried about Z's hair loss and possible lead poisoning and did consult the respondent before the tests; one of which he agreed to. She conducted both tests anyway, as she explained on cross examination due to an initial misunderstanding. In the end, the respondent was at the pediatrician visit via phone.
- [75] As will become apparent below, the amount of child support which the respondent ought to have been paying post-April 2024 is close to the reduced amount he actually paid. Z's parenting time has been equal since March 2024. While it is certainly not desirable for parties to undertake self-help mechanisms, such as reducing support or parenting time, or relocating without the proper procedures, the impact on Z in this case has been minimal.
- [76] In terms of the medical appointment, the claimant initially went forward on her own, but did involve the respondent early on and he attended the pediatrician visit. Once again, the impact on Z was minimal. Going forward, however, both parents will be expected to abide by protocols so that the other parent is kept informed of any medical issues or consultations, and in all but the case of an emergency, consents to any treatment or testing. The shared parenting order should include language to this effect.
- [77] I find that despite some past non-compliance, this is not a strong factor in this case.

[78] Having considered the factors specific to relocation, I will now go on to deal with the factors framing the court's analysis of the best interests of the child more generally.

The Best Interest Factors (s. 16(3))

Child's needs, given age and stage of development (s. 16(3)(a))

[79] Z has been living in Squamish and Whistler since the early months after her birth. She is currently seven-and-a-half years old, an age at which most children are adaptable. She appears to have recently improved her ability to make connections with schoolmates and friends, and several witnesses testified as to how social and outgoing she is. In the respondent's discovery, a portion of which was read in at trial, he testified that Z makes friends easily, despite being a bit shy in new settings; that she did well in the adjustment from kindergarten to Grade 1; and that she also adjusted well to the change from two to three nights of parenting time with the respondent. There is no indication she would have difficulty fitting into a new environment. I view her need for stability as typical and this factor as neutral.

The nature and strength of the child's relationship with each spouse, siblings, grandparents and any other person who plays an important role in the child's life (s. 16(3)(b))

The Siblings

[80] As noted, Z has two siblings who are the children of the respondent and his former partner S.C: K, who is 18, and M, who is 16. It is clear from the testimony of S.W., A.P., and others, that Z is closer to M, although A.P. observed that M can sometimes get frustrated with all of Z's attention. There is clearly a strong sibling bond between Z and M. I find that this bond is weaker with K. Several witnesses mentioned her not being around as much; having outside interests and preferring time with her friends. A friend of the respondent's gave evidence that of ten recent dinners with Z and the respondent in his home, the teenaged children had only been present three times for a sit-down meal, and, on a couple of occasions, passed in-and-out on their way to other activities. The Court also heard evidence that K is considering post-secondary school and moving out. Similarly, the respondent stated that he did not see M and K living in the house beyond the next couple of years.

[81] I find that Z's relationship with M is stronger than with K, and that Z's relationship with both of her siblings is either attenuated or is likely to become so within a couple of years once they move out of the house. This attenuation is present to a greater degree with K. If Z relocates to the U.S., the claimant's plan still provides for visits and time with Z's siblings. Relationship with her siblings is not a neutral factor, but given the attenuation of the relationships and the age of her siblings, it does not weigh heavily against relocation.

The Respondent

- [82] The respondent led evidence that he has been actively involved in Z's life since her birth and has been a caring and capable parent alongside the claimant. He testified that he has spent a significant amount of time sharing his active lifestyle with Z since she was little, including by skiing together. In his submissions, he referred to his hands-on involvement in Z's care by taking responsibility for various parenting tasks such as shopping and cooking; guiding bedtime routines and brushing her teeth; taking her to sports; helping her study; arranging social activities with other children; and supporting her when she felt sad. It was clear, however, in particular from his evidence on cross-examination, that the care of Z in her early life largely fell onto the claimant. This accords with the other evidence at trial concerning the respondent's work schedule. The respondent's role in the home prior to the breakdown of the marriage was primarily directed towards tasks such as shopping and cooking.
- [83] A.P. viewed the respondent as a patient father, sometimes in the face of difficult interactions with his older daughter. A.S. gave evidence to the same effect, describing her son as a patient, warm, and loving father with a parenting style that had become "unencumbered" in recent months, with Z flourishing as a result. A.S. also testified that Z loves the relationship "that she has now" with her dad. I find that there has been growth in the respondent's closeness with Z in recent months, and that he is now a more involved parent than he was when Z was younger. I accept A.P.'s evidence overall as given with an admirable objectivity and fairness, although I observe that he spent less time with the family than some others.
- [84] S.W. testified that Z has told her that she loves her dad and enjoys skiing with him. M.W. also recognized the respondent's strengths as a parent, including his efforts to learn how to best support his daughter in terms of her racial identity. However, he stated that the best thing for Z, in the context of the reality of her long-term future, was for both parents to thrive and to be seen to be valued and respected, which was a compelling and measured observation.
- [85] I find that the respondent has a close relationship with Z and that, in particular since March of 2024, their bond has grown. His strengths as a father have flourished in recent months.

The Claimant

- [86] It is clear that Z has had a strong bond with the claimant since birth, which the claimant described as "nourishing her mind, body and spirit". Their relationship of care includes the claimant supporting the development of ties with friends and family, her educational growth (by helping with homework and reading to her), her involvement in extracurricular activities, and her medical care. The claimant and Z also have a strong emotional bond that the claimant has nurtured since Z's birth.

- [87] The respondent's mother, A.S., and stepfather, A.P., also testified as to the claimant's strengths as a warm and caring mother. The claimant's witnesses also all testified in favour of the claimant's strong bond with Z and her skill and care as a mother.
- [88] S.W. said that Z loves the claimant, that the claimant allows Z to cry, that the claimant takes Z to dance and to the library, and that Z loves to cuddle with the claimant. L.Y.W. said that when Z was a baby, the claimant would stay up at night with her while the respondent did not. I accept her evidence on this point, which was uncontradicted. L.Y.W. also said that the claimant exhibited skills as a devoted mother by making sure all three children were taken care of (for instance, by bringing them to school and extracurricular activities) and ensuring that the house was in order, among other responsibilities.
- [89] The respondent agreed that the claimant arranged the majority of Z's doctor's appointments, was responsible for Z's nap schedule, and took Z to school most days.
- [90] In conclusion, I find that the claimant has consistently been a caring and devoted mother to Z, and that they are strongly bonded to one another.

The Claimant's family

- [91] The claimant and key members of her family gave evidence about Z's relationship with other members of the claimant's family. I accept that despite the distance, the claimant's father, mother, and sister, all have a close bond with Z, developed through frequent FaceTime calls and regular visits two to three times per year, as M.W. testified. During trips to New Jersey, this bond included extended family members such as the claimant's cousins, great-grandparents, aunts, and uncles.
- [92] Z's maternal grandfather, M.W., is a doctor. He is still working but is trying to cut back. He and S.W. live in Upper Saddle River ("USR") a small upper middle class suburban community 90 minutes from New York City. His memory was occasionally faulty but his evidence regarding his close relationship with Z was clearly stated. He described learning to connect via FaceTime during the COVID-19 pandemic, including "babysitting" via weekly FaceTime calls, as well as doing science experiments, art projects, and reading stories together virtually. Education was a family value inculcated by M.W. in his children and he was clear in his intention to pass that on to Z. He expressed how proud he was to have taught her to swim while visiting in Whistler, helping her to overcome a fear of the water.
- [93] Z's maternal grandmother, S.W., also testified. She is retired as a pediatric nurse practitioner and works occasional part time hours in real estate. She also described having a close relationship with Z: responding to Z's curiosity and trying to inspire her by tapping into her strengths of creativity and athleticism, and her enjoyment of drawing, reading, and writing stories. Further, S.W. described making pillows to teach Z sewing skills, making bracelets, and completing other arts and craft projects such as ceramics and clay. S.W. described larger family gatherings. In this context, Z's outgoing personality and caring nature was described through specific examples.

- [94] The claimant's sister L.Y.W. lives in Brooklyn, New York, and described an exceptionally close bond within the family. This closeness occasionally affected the objectivity of her evidence, most notably when addressing the parties' relationship breakdown, which is not directly relevant to the s. 16(3) DA analysis.
- [95] Like other witnesses, however, she described clear examples of time spent with Z that showed their closeness, and I accept all the evidence in this regard. L.Y.W. described engaging in imaginative play, park visits, and ongoing conversations, and testified that Z confides in her. She also described a visit to her New York office: a joyful and meaningful experience for both of them. L.Y.W. stated she would be readily available for childcare, after-school pick-up, and shared activities such as dance classes. She testified that spending as much time as possible with her niece is among her highest priorities.
- [96] These specific examples painted a clear picture of Z's bond with all these family members.
- [97] S.W. testified that post-separation, it became difficult for her and M.W. to see Z when they visited Whistler, due to Z being occupied with activities like ski school and soccer. Thus, the quality time that S.W. spends with her granddaughter has recently mostly taken place in New Jersey. I accept her evidence on that point.

The Respondent's family

- [98] A.S. and her partner, the respondent's stepfather, A.P., both gave evidence. They split their time between Whistler and Gibsons, where Z and the respondent visit to enjoy and swimming. Z enjoys painting with watercolours with A.S., with whom she has a close bond as described by A.P. They also sew, play piano, ski, and go for walks. A.S. and A.P. describe Z's visits as relaxed, and that she can run around freely. A.P. has an engineering background and clearly enjoys sharing a variety of topics with Z, including home repairs, electricity, and where water comes from. A.S. and A.P. also enjoy skiing with Z and the rest of the family. A.S. sees the respondent at least weekly and up to three times per week during the time where she is living in Whistler and sometimes babysits in the evenings for up to three hours at a time. Pre-separation, A.S. attended or hosted family dinners and games nights. A.S. testified that she feels that she and Z are growing closer all the time, and that Z is feeling "more and more comfortable" in her presence.
- [99] I accept the accuracy of these observations and the true appreciation both A.S. and A.P. have for the time they spend with Z whom they find to be curious, smart, energetic and delightful.
- [100] The respondent's own biological father is deceased. The claimant gave evidence that she has twice facilitated visits with Z and the respondent's stepmother at her home in the interior of B.C. The respondent did not give evidence of any recent attempts to strengthen or nurture the bond between Z and his stepmother. His response when questioned was that his stepmother did not wish to speak to him. The respondent did not explain the situation. It appears to have fallen on the claimant to ensure that Z continues to have a relationship

with someone she has grown up knowing as another grandparent.

- [101] In conclusion on the nature and strength of Z's relationship with her family members, I find that this factor favours relocation. In saying this I do not wish to denigrate at all Z's important connections with her B.C. family. It was abundantly clear at trial, that this is a child who enjoys meaningful experiences with loving adults from both sides of her family.
- [102] Z's relationship with her siblings is becoming attenuated due to their age, however, and can be at least partially maintained by the claimant's plan. A.S. and A.P. are not as available as M.W. and S.W. are to spend time with Z. In relocating, Z would have abundant time with S.W. and M. W. as well as with L.Y.W., who offers herself as another role model and provider of enrichment within a relationship that is already close and bonded. Finally, it is at present only the claimant who is able and willing to facilitate Z's relationship with her other grandparent, the respondent's stepmother. While visiting may be logistically more difficult after relocation, it would involve travel no matter where Z is located.

Each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse (s. 16(3)(c))

- [103] The claimant gave detailed evidence about her plans to support the development and maintenance of Z's relationship with the respondent. The claimant is aided in this by her family members who testified directly as to their support for this plan, although I observe that this factor requires me to focus on the spouse's willingness specifically, and not that of family members.
- [104] When the claimant was asked in cross-examination to comment on the effect of distance on Z's relationship with her father, she testified as to her belief that "distance does not necessarily mean negative impact to [the] quality and strength" of a relationship. While I accept the claimant's evidence as to how she has nurtured Z's relationships with her New Jersey family from afar, the respondent makes the valid point that FaceTime is not a replacement for in-person parenting time. A daily FaceTime call, while important, cannot make up for the fact that if she relocates, Z will no longer see her father on a weekly basis.
- [105] The respondent submits that he is the parent most supportive of fostering a positive relationship with the other parent and the most generous with granting time for travel and bonding opportunities. He pointed to the evidence of his friend, C.D., and of A.S. and A.P., that he always speaks well of the claimant to Z. He stated that he has a history of supporting Z's relationship with the claimant and her family, and provided several past examples including agreeing to travel and organizing phone and FaceTime calls with them on his own parenting time. The respondent did not directly address his willingness to support Z's relationship with the claimant in the future, however.
- [106] The evidence also revealed a contrast in the flexibility that each of the parties has been willing to offer the other in terms of parenting time in recent months.

- [107] The Court heard evidence from the claimant and her parents that in the past summer, the respondent was unwilling to allow four extra days for Z to visit New Jersey to accommodate various extended family visits during Z's time in the U.S. The respondent did not deny that he refused to allow the extra days, though he viewed the difference between 24 and 28 days as small. Similarly, when the claimant's parents were visiting Whistler around Z's birthday, the respondent made it difficult for them to spend more than a minimal amount of time with Z, despite the fact that they only had a few days to spend in B.C., and despite their efforts to arrange a dinner to include Z's siblings. In the end, however, the respondent did allow a parenting time hand-off a few hours ahead of schedule on the very last day of their visit.
- [108] By contrast, the evidence was that the respondent himself had, on several occasions, asked for similar flexibility from the claimant. On her cross-examination, S.W. was asked whether her real quarrel was with the court order stipulating the parenting schedule, and not with the respondent. She answered:
- [] parents can work out, between them, small modifications. When you [emphasized] want things to be different; like I was there and you were asking [L.W.] to allow Z to go to celebrate your mother's birthday for the weekend that was not your weekend or when you asked her if she could come and celebrate [M's] birthday on a weekend that is not your weekend, it's okay for you to be flexible then, you don't worry about the courts but when [L.W.] asks
- [109] The last few words of S.W.'s answer were inaudible because the respondent interrupted her and changed the subject.
- [110] I find that the claimant and her family have generally shown a willingness to support Z's relationship with her father and his side of the family, and that this has not always been fully reciprocated. The claimant also provided more detailed evidence about her willingness to support the development of the respondent's relationship with Z in the future. Her family all testified as to their willingness to co-operate in this regard.
- [111] Going forward, such cooperation, and the cordiality with which it can be achieved, will be of extreme importance to Z. Courts have recognized the clear connection between healthy co-parenting relationships and children's well-being: L.B. v. D.F., 2024 BCSC 2027 at para. 60.
- [112] On balance, this factor weighs in favour of relocation. Since the parties have had equal parenting time, the claimant has shown a greater willingness to be flexible and facilitate the respondent's parenting time, and she and her family have testified as to their intention to continue to support this time. This leads me to believe that, in the future, her willingness to support the development and maintenance of Z's relationship with the respondent and his family will be stronger than the respondent's willingness to do the same, notwithstanding the respondent's consistent and admirable focus, with Z, on speaking highly of the claimant as a mother.

The history of care of the child (s. 16(3)(d))

- [113] The parties' witnesses had conflicting perspectives on how much time the respondent spent with Z during the marriage. For example, L.Y.W. testified that, when she was visiting Whistler, the respondent spent very little time with Z, instead focussing on his older children, and particularly K.
- [114] In contrast, A.P. gave evidence that the respondent spent a lot of time with Z to the extent that K found it unfair. Some of these discrepancies can be explained by the respondent's tendency to step back when the claimant's family visited, and to become more involved when Z was around his own family members. A.S. testified that the respondent took the lead in key choices about Z's education, eating habits, and athletic pursuits, and that he did 80% of the grocery shopping, cooking, and cleaning. A.P. gave similar evidence, describing described the respondent's role as the "main cook" for the family. Various of the other witnesses gave supporting evidence in this regard including the respondent and L.Y.W. who confirmed that the respondent cooked and grocery shopped. I observe that cooking and grocery shopping, laundry and household chores, though important, are not tasks exclusively associated with Z's care. The respondent had two other children in his household and these tasks were to the benefit of all.
- [115] While A.S. was not as consistent in her objectivity as was A.P., she provided clear evidence that the respondent would often arrange his day or arrive home from Vancouver, in time to pick Z up at the end of the day. M.L., a friend of the respondent's, testified that the respondent brought Z to work with him, where he would keep an eye on her and hold her in a swaddle throughout the day: she testified as to her belief that this made him the primary caregiver. I was not directed to evidence of how often this occurred.
- [116] On the other hand, the claimant submitted that her relationship of care for Z was deep and holistic. She spoke of helping Z with homework, reading to her, getting her involved in extracurriculars, getting her proper medical care, and supporting her relationships with family and friends. This was confirmed in the evidence of all of her family members. It was also clear from her evidence and that of others, that she performed the majority of the parenting tasks while Z was an infant and young toddler.
- [117] I find that in her early years of life, Z was primarily cared for by the claimant, with the respondent assisting, for instance, by cooking meals and grocery shopping.
- [118] During the years when the respondent was running his business, I find that the claimant performed more parenting duties for Z than did the respondent. L.Y.W. testified that there were times where the respondent would sleep at work while he was running his business, and that from her perspective the claimant spent a lot of time alone with Z or with the three children. I accept this evidence which was not contradicted by that of other witnesses.

- [119] In the period between the failure of the respondent's business and the parties' separation, I find that the claimant continued to perform more parenting duties for Z than did the respondent. M.W. testified that, at this time, the respondent was more withdrawn, and the claimant was taking on even more responsibility around the house. At this time, some of which coincided with the COVID-19 pandemic, the claimant remembered being alone with the kids a lot, especially with M and Z, describing their daily activities.
- [120] From November 2023 to March 2024, the respondent had no parenting time with Z, against his wishes. I have not counted this time in assessing this factor.
- [121] In March 2024, by court order, the respondent spent three evenings and one weekend day per week with Z. In October 2024, this was altered by agreement such that the parties' parenting time was roughly equal. Thus, for the year leading up to the trial, Z's care was provided equally by both parents.
- [122] On balance, I find that although initially Z was cared for more by the claimant, and that the claimant continues to provide care and nurturing in all the ways she has testified, the respondent has, in the year prior to trial, assumed a more active role in Z's care.
- [123] This factor looks at "the history of care," however, not just the recent history of care. The inference that a relationship may be slightly stronger based on overall history is open to me based on the facts before me: Link at para. 26. I find that, on balance, this factor favours the claimant but ought not to weigh heavily in the analysis, given that the recent history indicates a more balanced situation.

The child's views and preferences, unless they cannot be ascertained (s. 16(3)(d))

- [124] The parties are to be commended for keeping the nature of their dispute out of their interactions with Z. This is to her benefit. The result of this, however, is that the Court heard no evidence to indicate that Z has expressed any preferences. Hearsay evidence of children is sometimes accepted on an issue such as this. According to *Sahi v. Sahi*, 2023 BCSC 736 at paras. 208-210, the Court has broad discretion to admit a child's hearsay evidence, having regard to the child's best interests, such that it may be admitted for its truth if it is reliable. The indicators of substantive reliability for children's hearsay statements include the child's age, intelligence, understanding and demeanour, the timing of the statement, whether it was made spontaneously, the absence of motive for the child or the person testifying to fabricate, and the absence of suggestion, manipulation, coaching, or undue influence.
- [125] There was no hearsay evidence speaking directly to Z's expressed preferences as to her home in Whistler or her grandparents' home in New Jersey. There was observational evidence from witnesses on both sides of the family, as to Z's contentment being in both New Jersey and BC.

[126] I therefore cannot ascertain Z's preferences; but equally there is nothing to indicate any dislike for either location: on the contrary, Z appears to be well adjusted and content in both locations.

The child's cultural, linguistic, religious and spiritual upbringing and heritage (s. 16(3)(f))

[127] Z's heritage is an issue in this case. The respondent is white and the claimant is Black. Several witnesses gave evidence about issues related to race. Some of this was hearsay evidence of Z, which I accept on the basis set out above.

- a) M.W. testified that Z has expressed to him, either directly or indirectly, that she is insecure about her skin and hair, and the differences between her and her classmates. M.W. reported that these things make Z sad. L.Y.W. gave similar evidence as to Z's statements to her, and the way in which she supported her niece by positive conversations about the colour brown and her own lived experience. M.W. also testified that he is not sure if the respondent truly understands Z's positionality, although he acknowledges that, from early on in Z's life, the respondent took initiative to read up on the subject of race and to think about how to best support his daughter.
- b) Several witnesses mentioned Z's hair. A.S. testified that she was not taught how to manage it, which has made it challenging and frustrating for her to help Z in this respect. She expressed frustration about the instruction not to wash it, even if Z were with her for several days. L.Y.W. testified that Z told her she instructed the respondent on how to properly care for her hair, but she was told no. The respondent testified that he understood the cultural importance of the claimant and Z doing Z's hair together and agreed that the claimant has more experience with managing hair like Z's than he does. However, the respondent also testified to a lack of ongoing communication and effort on the claimant's part to engage him in Z's hair care and particularly resented Z's statement that "no white [members of the O family]" were "allowed to touch [her] hair." I accept that the care of Z's hair is part of her cultural upbringing and that the claimant is more knowledgeable with respect to it. I also find that there has likely been a lack of communication around the care of Z's hair, despite the claimant's emails containing at least some instructions around hair, which has resulted in the respondent and A.S. being less involved than they could be. I cannot make a determination as to whether the respondent and A.S. would be willing and able to learn and assist with a specific hair care routine for Z.
- c) Demographics of New Jersey compared to Whistler/Vancouver:
 - i. The respondent brought evidence as to an elementary school in USR, which appeared from website photos to have a predominantly white student body, thus making it no different from Z's Whistler school. S.W. confirmed that Z would, in fact, attend this elementary school.

- ii. The respondent led evidence as to the census data of USR which showed that 1.48% of the population is Black. S.W. gave evidence that their suburb was not very big and added that the adjacent communities are very diverse, estimating that the community surrounding USR has a larger Black population. S.W. testified that students at the high school that Z would attend include those from the surrounding municipalities.
- iii. L.Y.W. testified as to her experience as a person of colour in New York and New Jersey, where she sees other people of colour everywhere she goes. She testified that she does not have that experience in Vancouver. Based on her own lived experience, L.Y.W. testified that she believes that, should Z relocate to New Jersey, the ability to see and interact with other people of colour every day, and to live with people who share an understanding of how the world identifies her, would benefit her. M.W. testified that, within his community in New Jersey, he sees Black people every day. He testified that this is unlike his experience in Whistler, a reality which he described as "not bad, just different."
- d) The respondent testified that he thinks it is unlikely that Z's self-esteem would be affected by growing up as the only Black or mixed-race child in many groups in Whistler. The respondent also testified that Z has been sheltered from racism and has not experienced it at school. He said that he has tried not to sensitize her to this matter and has not wanted to bring it up. He said that he does not want Z to grow up thinking whiteness is bad and testified as to his belief that she needs positive role models from both races. He also stated that from his perspective, Z's exposure to her maternal family was sufficient.
- e) The respondent also testified that he has recently read books about race, one of which was by Dr. Marguerite Wright: *I'm Chocolate, You're Vanilla*, published in 1998. His interpretation of this book was that it is completely normal for racialized children to have questions or to experience discomfort around their skin colour and that these observations are natural. They do not mean that they have negative feelings towards themselves, nor does it reflect a failure in their upbringing with regards to race. I note that there is little authority addressing the admissibility and use of social research in family law matters: *Walker v. Maxwell*, 2014 BCSC 2357 at para. 75, *aff'd* 2015 BCCA 282. I have considered this evidence but given it limited weight.
- f) M.W. testified that he encourages Z to get to know her European roots, and that it is a blessing that Z gets to have positivity and engagement with both sides of her background, as many children do not get to have that experience.
- g) The respondent also testified as to a summer camp he found for Z which he said is for children who are of African descent. The claimant submitted that this camp is for adopted Black children of white parents, which is not Z's situation.

[128] In *Van de Perre v. Edwards*, 2001 SCC 60, it was held at para. 40 that biracial children should be encouraged to positively identify with both racial heritages. The Court also stated that race can be a factor in determining a child's best interests, because it is connected to the child's culture, identity and emotional well-being. The significance of race in any given case

must be carefully considered, however, and the importance of race as a factor depends on many factual considerations (para. 37). The court must be cautious not to make assumptions that one location would better serve the child's racial identity, absent clear evidence: *Shipton v. Shipton*, 2024 ONCA 624 at para. 42. Racial identity is "but one factor that may be considered" when determining whether relocation should be granted, and factors which are "more directly related to primary needs" should be prioritized: *Van de Perre* at para. 38.

- [129] The case law demonstrates that this factor involves a fact-specific evaluation of what is in the child's best interests, and its weight in the overall determination depends on the strength of the evidence and the relationship between this factor and others: *T.K. v. R.J.H.A.*, 2015 BCCA 8 at para. 72. A finding that one community will better support a child's cultural, linguistic, religious or spiritual upbringing must therefore be tied to evidence in the record.
- [130] In *Joseph*, the Court held that the children's cultural, linguistic, religious and spiritual upbringing and heritage weighed in favour of permitting a relocation to New York: at para. 149. The Court accepted the mother's evidence that it was unusual for the children, who were of Haitian-American, Caucasian, and African-American descent, to encounter people who looked like them in Victoria, and that it would be easier to protect them from being identified externally by their skin colour in a place where there were more people who looked like them, such as New York: at para. 148. In particular, the mother testified as to her desire for the children to be "fully in community with people who recognise there is more to them than the colour of their skin", which the Court accepted: at para. 148.
- [131] I find that there is evidence that New Jersey and New York would better support the cultural development of a biracial child (with a Black parent) than Whistler and Vancouver would. I do not think serious issue can be taken with the notion that the population of Black and biracial families is higher in New Jersey than in Whistler and Squamish, even taking into account that the specific suburb where the claimant's family lives is a predominantly white community. If Z relocates, she will be exposed to a type of diversity that just does not exist in Whistler. She will be able to see people who look like her everywhere she goes, per L.Y.W. and M.W., who testified as to their experiences in the two locations. While the respondent is correct that Z's racial consciousness can come primarily from her mother and her mother's family, relocation will allow her to benefit from the added feature of a wider community in which she will see herself reflected on a constant and widespread basis, while at the same time bringing her closer to this side of her family. As in *Joseph*, it will be easier to protect Z from being identified externally by her skin colour in a place where there are more people who look like her: at para. 148.
- [132] On this note, there was controversy amongst the witnesses about how Z's racial identity should be defined. S.W. testified as to her belief that Z is Black because she has one Black parent. As per *Cameron v. Luckhardt*, 2023 ONSC 5477, children with one white and one Black parent must "navigate being biracial in a world where bias and racism still exists": at

para. 105. In this regard, a Black parent may be better suited to provide support and guidance to a biracial child, as they may experience similar challenges related to bias and racism that a white parent will simply not experience: Cameron at para. 103.

- [133] The respondent has proposed laudable, if vague steps to foster Z's connection to her Black heritage--for example, arranging for her to attend a camp for adopted children of African descent, keeping books and movies with Black characters around the house, and facilitating positive discussions around people of colour. These steps run counter to the issues surrounding Z's hair care, however, and the respondent's efforts to dismiss Z's concerns and insecurities related to her hair and skin colour as "natural" and "unrelated to race".
- [134] On balance, I find that this factor favours relocation. I recognize and find that both parents will be able to contribute to a healthy racial socialization for Z: the claimant and her family have helped Z understand and embrace her identity as a racialized person, while encouraging her to get in touch with her European roots, and the respondent has shown initiative to educate himself on Z's positionality. However, I find that the claimant and her family's capacity to provide support and guidance to Z as she navigates being a biracial girl, and the environment within which Z's upbringing would occur with them, would best support Z's development in all the circumstances.

Any plans for the child's care (s. 16(3)(g))

- [135] If relocation occurs, the evidence is that the claimant's family would be able to assist with childcare, as much as is needed. S.W. testified that she would be able to drop off and pick up Z at school, care for Z after school, and prepare meals.
- [136] In Whistler, the claimant has minimal support for childcare, which curtails her ability to work. Although A.S. and A.P. support the respondent by taking care of Z when he needs help, I did not hear any evidence that they have extended the same help to the claimant, particularly after separation. A.S. gave evidence that if Z was 100% in the respondent's care, then A.S. would be available to help more.
- [137] In his submissions, the respondent argued that the claimant's plans for Z's care in New Jersey were not fully developed. He submitted:

If [SW] is to be taking care of [Z] while [the claimant] is working, this is a poor substitute for her time with her Dad. Right now, the parties are able to work while the other parent is parenting and parent while the other parent is working. The current situation is ideal - both parents maximize their work times and their parenting times, and [Z] gets maximum time with her parents. If the parties utilize child care, it is fill in "gaps" and not to substitute another caregiver.

[138] It was not in evidence, however, that one party worked while the other provided childcare, although I accept this may have occurred. It was in evidence that Z attended a daycare where the claimant also worked, which was ideal from the claimant's point of view as the work hours coincided with Z's daycare hours. I do not accept the respondent's submission as a plan for Z's care, since it was not put forward in evidence nor was it reflected in the evidence about Z's current care.

[139] The future plans for Z's care as presented at trial revolved around time with grandparents. While both A.S. and S.W. are loving grandmothers who are fully capable of providing excellent assistance in this regard, A.S. lives in Gibsons for half of the year, and there was also evidence as to her occasionally travelling. In contrast, S.W. has minimal personal obligations of her own, being a retired health care professional who works a few part-time hours and has specifically testified as to her ability to provide as much assistance as the claimant requires. The ease and constancy of care for Z from her maternal grandmother weighs in favour of relocation. Further, the additional support which L.Y.W. testified that she would provide in terms of childcare if relocation were to occur reinforces my finding on this point.

The ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child (s. 16(3)(h))

[140] I have already discussed the history of Z's care and the way in which the respondent's role has shifted post-separation. I have no doubt that he is able and willing to care for and meet Z's needs, as he has been doing for roughly half the time for over a year since the Hughes A.J.'s order.

[141] The claimant is also able and willing to care for and meet Z's needs.

[142] This factor is therefore neutral.

Any family violence and its impact on, among other things, the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child (s. 16(3)(j)).

[143] Before looking at elements of family violence in this case, I make the following brief observations.

[144] In Barendregt, the Court rejected preconceptions about family violence:

[143] The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives []. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it. []

[Citations omitted.]

- [145] The Court of Appeal has provided guidance on the need for the court to guard against the application of myths and stereotypes when examining issues of family violence, for example, that a credible woman reports violence early or as soon as it occurs: *K.M.N. v. S.Z.M.*, 2024 BCCA 70 at paras. 121-122.
- [146] On May 6, 2023, the parties had an argument in which the respondent was intoxicated. He screamed and swore at the claimant and then threw his phone on the floor, which broke and shattered glass at the claimant's feet. He stated words to the effect, that "I broke a phone and not you". Z awoke crying at some point during this incident. It is not known how much she overheard.
- [147] In the past, the respondent had been violent towards his former partner and two older children, M and K. With regard to the episode with his former partner, alcohol was again involved. The respondent remembered little, but the matter was reported to police: their report indicated that he struck his former spouse with an open hand while the two attended a wedding out of town. With regard to K, he pushed her head into a pillow, and with regard to M, the respondent threw him into a wall. The general facts surrounding these incidents are not in dispute.
- [148] Family violence against a previous partner or other family members is not a stand-alone factor to be examined within the best interests analysis, but, in my view, it can be considered alongside other factors.
- [149] Coercive and controlling behaviour is another form of intimate partner violence which I am required to consider under DA, s. 16(4)(b). As with physical violence, the seriousness and frequency of such behaviour ought to be examined.
- [150] Examples of such behaviour in this case include; certain aspects of the claimant's health not being promptly attended to including an infected tooth and a concussion after a snowboard accident; repeated shaming of the claimant over her low income or lack of income and pressuring her to return to full-time work while also being a full-time parent, which was witnessed by Z; isolation in the family home without a vehicle; repeatedly attempting to have the claimant accept a particular employment she stated she did not want, both during and after the marriage and up to and throughout this litigation; disrespectful treatment in court; sending numerous long and confusing emails; suddenly cutting off access to a shared credit card used for expenses related to Z, albeit after a period of disagreement over certain charges; and setting out bags of trash and expired food as part of the claimant's "belongings" when, having enlisted the help of another mother who had a vehicle, she came to the FFH with her sister, L.Y.W., to pick up her personal effects after the marriage breakdown.

- [151] I find, therefore, that there has been family violence; in particular with regard to the phone-throwing incident and the strong language which I find accompanied the episode. Z awoke and was upset. Nothing like this has occurred since, and the respondent has taken some responsibility for his actions by seeing a therapist four times in 2024. There was also evidence as to his ongoing work on anger management with this therapist and by self-help means.
- [152] There are also some elements of coercion and control in this case, some of which are ongoing, which I must consider in determining what will be in Z's best interests going forward, as required by s. 16(4)(b) of the DA.
- [153] These family violence issues are not an overwhelming factor in this case, but they weigh in the analysis in the direction of the claimant's position. Family violence may cause harm to a child through indirect exposure, a factor I am required to be attentive to: Barendregt at para. 133; Shipton at para. 27.

Conclusion on Relocation

- [154] In conclusion, as Justice Kent said in *T.F. v. J.F.*, 2023 BCSC 2226 at para. 148, I fully understand and regret the negative impact that relocation will have on the respondent's parenting time. I also recognize that this is the unfortunate and inevitable result of these difficult cases. However, my sole and important focus is the long-term best interests of Z.
- [155] I have considered all of the factors which the legislation requires and I have concluded that the claimant's relocation with Z to New Jersey is in Z's best interests. The principal factors which led to my decision included the claimant's valid and compelling reasons for relocation, the reasonableness of her proposal for the respondent's parenting time, her willingness to maintain Z's relationship with the respondent, her plans for Z's care upon relocation, and Z's cultural upbringing and heritage.
- [156] I therefore make an order pursuant to s. 16.1(7) of the DA authorizing the claimant to relocate with Z to New Jersey as of March 28, 2026, or such other date as the parties may agree.

Timing of relocation

- [157] I considered whether this order should stipulate that the claimant and Z remain in B.C. until the end of the school year. That would also be a reasonable date to choose. On balance, I am giving the claimant more leeway to orchestrate an earlier move, in order to give Z the option to begin school in New Jersey before the end of the school year, if possible. In my view, this is in Z's best interests, since it will give her the opportunity to make connections at school before the summer break and settle into her new community. It is also in her best interests to stay in Whistler until the end of the spring break, however, as it will allow Z to spend more time with her father during the ski season. March 28, 2026 accomplishes those objectives. This order gives the parties the ability to consent to another

date either before or after March 28, however, should March 28 not be suitable for reasons that have not been put before me.

- [158] If the claimant relocates at the end of March, the parties are to follow the claimant's summer parenting plan with one variation. I observe that summer vacation in many U.S. states is typically longer than in the Canadian school system. Even if this is not the case in New Jersey, I find that it is in Z's best interests to maximize her time in Whistler during the summer vacation, this year and every year hereafter, subject to the parties' agreement otherwise. It should be clear that she need not remain in Whistler: I understand the parties already to have an order in place for them to travel with Z within B.C. The respondent may, for example, choose to spend some of his summer parenting time with Z in Gibsons and this should be facilitated.
- [159] The claimant's plan has Z in Whistler for six weeks during vacation. I find that seven weeks is more appropriate, with a provision for a minimum of three two-day blocks of parenting time for the claimant, the dates of which will be agreed between the parties. I would encourage these parties to work together to arrive at dates which will facilitate the respondent's work schedule, which he cannot be expected to step away from for the entirety of his summer parenting time, and which will operate in Z's best interests so that she can have a check-in with her mother, but still enjoy the best that British Columbia in the summer can offer. The parties may seek to agree, as Z grows older, on a different schedule that consolidates the claimant's summer check-in time rather than spreads it out.
- [160] If the parties cannot agree on the claimant's visiting time, they will adhere to the following method: the respondent will put forward a set of at least five choices of two days each, with at least two of them on weekends, and the respondent will confirm up to three of them. All arrangements for summer parenting time are to be put in place yearly by April 1 or such other date as the parties may agree.

Division of Property

- [161] Where spousal support and property division are both in issue, the court must address property first, including reappportionment, and then address support: *Hathaway v. Hathaway*, 2014 BCCA 310 at para. 69. The objectives behind a potential reappportionment of assets and those behind spousal support may overlap with regard to economic self-sufficiency: *Hathaway* at para. 71. Accordingly, I will address the parties' claim for property division before turning to their incomes and the claims for child and family support.
- [162] Spouses have an equal entitlement to family property as set out in sections 84 and 85 of the *Family Law Act*, S.B.C. 2011, c. 25. Spouses also share family debt equally: s. 86.

Property of the Claimant

- [163] The claimant's property at the time of separation included a number of accounts in U.S. savings and investment institutions. The claimant explained at trial that funds from one account were sometimes drawn on to invest in another. I have treated them for the purpose of this exercise as one fund or "nest egg" which is how the claimant viewed them: her evidence was that these were monies that she had invested early on in her working life and which were intended to fund her retirement. The claimant submitted, and I accept, that the value of these accounts at the time of the marriage is excluded property. Any increase in their value during the parties' marriage, however, is presumptively family property.
- [164] The usual valuation date for long-term investment accounts is the date of the trial: *Fleury v. Budd*, 2025 BCSC 2035 at para. 280; *Brown v. Brown*, 2016 BCSC 1037 at para. 65. Departing from that date amounts to a reapportionment, which can only be done where significant unfairness is shown: *DA*, s. 95; *Banh v. Chrysler*, 2022 BCCA 74 at para. 26, leave to SCC ref'd, 40156 (12 January 2023).
- [165] The claimant admitted that she withdrew funds from her U.S. investment accounts to purchase a car and to pay legal fees and daily expenses, in the period between separation and the date of trial. Her evidence was that, without spousal support or other assistance from the respondent, she had no choice but to use this asset for Z's benefit especially given the high cost of living in Whistler.
- [166] Where a spouse withdraws funds from an account which is found to be family property after the date of separation, the other spouse should receive a credit for one-half of that withdrawal, unless the funds were used for a purpose such as, for example, improvements to the family home: *Donnell-Vella v. Vella*, 2021 BCSC 1953 at para. 105. Given that the respondent is entitled only to the increase in value of these accounts, however, and given that the accounts are mostly made up of excluded funds, far exceeding the value of the withdrawals, I find that it is not fair or practical to credit the respondent with one-half of the withdrawals, as was done in *Donnell-Vella*, since they would be subsumed in the excluded property in any event.
- [167] I was not taken to any cases on how the Court is to treat such a withdrawal where the bulk of the funds in the account constitute an excluded asset, such that they would not be subject to division in any event, nor any cases on withdrawals from retirements savings plans or similar.
- [168] In *M.B. v. M.L.*, 2024 BCSC 1368, Justice Elwood applied a separation-date valuation on the basis of s. 95(2)(g), where spouses had made withdrawals from family property Registered Retirement Savings Plans to fund litigation expenses: para. 221.

[169] Similarly, I find that in this case, it would be significantly unfair under s. 95(2)(i) to use a trial-date value. This would erase the gains made during the marriage, given the claimant's withdrawals, which I find she made in good faith because she had no other way to fund her basic living, transportation expenses and legal fees. A separation-date value allows the respondent to share in the value of the increase of the claimant's nest egg during the marriage.

[170] At the time of separation, these accounts had increased from \$180,108.13 USD to \$188,030.20 USD, or by around 4.4 percent. The claimant led evidence as to how funds from some accounts were rolled over into investments in others, over the course of the life of the investments. I have not taken possible taxes that the claimant might be forced to pay in the future into account, as there was no evidence as to the certainty or amount of these taxes.

[171] The following chart sets out the value of the accounts as reflected in the account statements presented at trial. Where there is no statement on the date in question, I have used the value on the closest available date.

Account

Excluded asset (@ Sept 2, 2017)

Separation Date value (@ May 7 2023)

Trial Date value

XXXXXX2084

\$20,979.31

\$54,269.32

\$75,424.02

XXXXXX9460

\$30,253.39

\$39,454.38

\$0.99

XXXXXX4752

\$89,277.81

\$85,398.31

\$0.85

XXXXXX1138

/ XXXXX9349

\$5,095.11

\$7,035.45

\$863.58

XXXXXX5215

\$5,565.37

\$85.83

\$675.35

XXXXXX0687

\$3,657.87

\$17.74

\$12,739.17

XXXXXX1316

\$25,022.32

\$1,493.40

\$768.23

XXXXXX1328

\$256.95

\$275.77

\$398.81

Total US\$

\$180,108.13

188,030.20

\$90,871.00

[172] The respondent argued that the accounts should be valued as if they had been left untouched until the date of trial, and that the amount of those hypothetical increases should be treated as family property of which he would be entitled to one-half.

- [173] The respondent did not provide expert evidence as to the increases that he said would have occurred if the claimant had not made withdrawals from the account. Nor did he point me towards case law which would suggest that I can take this hypothetical increase into account. I was also not taken to evidence as to which funds were liquidated, and which were left to stay and grow.
- [174] The respondent provided a chart which set out a list of funds, drawn from the claimant's account statements, and what could have been earned if those particular investments had been held in the same funds until the time of trial, referencing various websites such as "finance.yahoo.com". His calculations resulted in an increase of the nest egg from a separation-date value of approximately \$181,000 USD, to a trial-date value of \$249,435 USD. This represents an increase of almost 38%: a vast over-performance compared to the 4.4% increase in the claimant's nest egg over the five years of the parties' marriage. I find that even if I were to divide a notional increase of the funds had they not been partly used by the claimant for living expenses, which I find is not made out on the law or the facts, the respondent has failed to prove that this 38% increase would have occurred had the withdrawals not been made.
- [175] As of the date of separation, the increase in the funds was \$7,922.07 USD. I find that the claimant owes the respondent half of this increase, or \$3,961.04 USD which, at an exchange rate of 1.3391 (a Bank of Canada average exchange rate from May 5 to 8, 2023), equals \$5,304.23 CAD.
- [176] The claimant's TD Canada Trust chequing account XXXX621 falls to be dealt with differently. The cases indicate that accounts that are the subject of daily use and thus tend to fluctuate ought to be valued on the date of separation: Brown at para. 65. At this date, it held \$15,589.42 CAD, of which \$853.72 is an excluded asset brought into the marriage. The claimant therefore owes the respondent \$7,367.85.

Property of the Respondent

The Hawaii home

- [177] In 2011, the respondent's father (who is now deceased) and stepmother put the respondent on title of a property they owned in Hawaii. The respondent's father explained to him that he was concerned that if something happened to them, the U.S. government would collect a large amount of tax. He wanted to put the respondent on title so that this would not happen.
- [178] I accept the respondent's evidence that his father did not intend for him to use or benefit from the property in any way. He does not have keys to it, he cannot use the property, and he cannot exercise discretion over how it is used or maintained in any way. He has been there as a guest, as have his friends.

- [179] The law as set out in *Pecore v. Pecore*, 2007 SCC 17, at para. 4, recognizes a distinction between legal and beneficial ownership. In a parent-child joint tenancy arrangement, the parent's intention in entering the joint tenancy determines whether the child has a legal or a beneficial interest in the home. If the intention is to give the child only a legal interest in the home, the increase in its value would not be considered family property: *J.D.G. v. J.J.V.*, 2016 BCSC 2389. If the intention is to give the child an immediate beneficial interest in the home, the increase in its value would be considered family property: *Bains v. Bains*, 2024 BCSC 1760.
- [180] Based on the evidence, which I accept, the respondent's father's intention was to give him only a legal interest in the home, since the respondent was not involved in major decisions related to the home and did not contribute to it financially or materially: *J.D.G.* at para. 165. In other words, the respondent was not intended to benefit from the home in any way, so a beneficial interest was not intended to be granted to him.
- [181] Therefore, the Hawaii property is not family property.

The Former Family Home (FFH)

- [182] The FFH was acquired by the respondent in 2010. It is not a market-value property. It is a property regulated under the auspices of the WHA, which I accept means it cannot be sold on the open market. Its value is, therefore, less than one might expect given current B.C. housing prices.
- [183] The respondent claims the \$497,887 value of the home at the time of the marriage as an excluded asset. At the time of separation, its value had increased to \$580,805. At the time of trial, its value was \$612,666.
- [184] The respondent argued that he has maintained and paid for the upkeep of the FFH post-separation, while the claimant has not contributed to it, and that therefore, a trial-date value would be significantly unfair: *Bamford v. Mulyati*, 2017 BCSC 945 at para. 28.
- [185] Typically, differences in financial contribution will not be taken into account as a factor leading to significant unfairness on its own: *Jaszczewska* at para. 39, *A.M.D. v. K.R.J.*, 2015 BCSC 1539 at para. 68; *S.D.M. v. B.R.M.*, 2018 BCSC 1473 at para. 82.
- [186] For example, in *Draper v. Smith*, 2022 BCSC 2133, the Court viewed the payment of a mortgage, property taxes and utilities as routine expenses that did not contribute to the increase in the value of the property. The Court in that case went on to consider the living circumstances of the parties since separation. Mr. Smith, who left the former family home, had to pay rent post-separation, and Ms. Draper who, though paying the expenses, was able to stay in the home rent-free. In such a case, the Court found that Ms. Draper had not met her burden of establishing that an unequal division of the property in question would be significantly unfair. In this respect, this case is on all fours with *Draper*. The respondent did not point to any other factors under s. 95(2) justifying an unequal division of this family

asset.

- [187] I therefore cannot conclude that it would be significantly unfair to value the FFH as at the time of trial. Taking the values as at the date of marriage and date of trial, the claimant is entitled to a half share in the increase of \$114,779, which is \$57,389.50.

The Respondent's debts, inheritance, and bank accounts

- [188] The respondent listed his bank account XXXXX5525 in his 2025 Form F8 financial statement ("Form F8"), with a value as "rotating." At the time of separation, it contained \$6,693.75. On the same basis as with the claimant's daily use account, I find that this is a family asset and should be split between the parties: that is \$3,346.88 each.
- [189] The respondent's evidence was that he entered the marriage with between \$30,000 and \$50,000 CAD in savings. There was no evidence as to what became of those funds. He also received an inheritance of roughly \$219,000 in 2019. The claimant argues that it is not clear what the respondent did with the funds and pointed to contradictory testimony. The respondent's position is that these funds largely passed to his business, which failed, and to his mother to pay down a pre-relationship debt. The remainder, he says, was used for family expenses.
- [190] On the evidence, I cannot make a finding as to what became of the entirety of this inheritance or the respondent's pre-marriage savings. I accept that a large portion of it was either subsumed in family finances and spent on day to day living, sunk into the respondent's failed business, or paid to his mother. In any event, I accept that little, if anything, remained of these funds by the time of marriage breakdown, and therefore there is no family property here to consider.
- [191] The respondent's materials indicate that there is a mortgage on the FFH in the amount of \$309,301.12 as of August 10 2025, according to the respondent's Form F8. The respondent also pays down a mortgage that his mother took out when he divorced his prior spouse. That mortgage balance is \$87,158 according to the respondent's Form F8, and the monthly payments are \$515. He cited both this mortgage, and his child support payable for his two older children, as supporting a claim for hardship in relation to child support. I will return to support below.
- [192] The respondent put a \$40,000 Canada Emergency Business Account loan on his Form F8. I find that this is a business debt and not a family debt.
- [193] The claimant's position is that the parties ought to be responsible for their own debts. I did not understand the respondent to take issue with this position, and in any event, the murky state of the respondent's finances makes a finding impossible in this regard.

[194] The parties' jointly-owned vehicle was sold after the marriage breakdown and the proceeds were divided. The claimant submitted that the parties retain their current vehicles. I did not understand the respondent to take issue with this submission and therefore, I so order.

The Parties' Incomes

[195] Before dealing with child and spousal support, I will address the matter of the parties' incomes. Each party argues that income should be imputed to the other.

The Claimant's Income

[196] The claimant's income for 2024 was \$29,524 as disclosed on Line 15000 of her 2024 T1 tax return. This was earned through part-time employment in several different jobs all organized around Z's schedule, which she explained has been a limiting factor for her in the sorts of jobs she is able to pursue. A 20-hour a week job that she had for five months, ended when the company moved out of Whistler in May 2025. She is currently working for a charitable support society (four hours per week); for the Municipality of Whistler (eight hours per week plus an additional few hours per month); and for a gym in Squamish (two to three hours per week). These are all casual positions: she holds no permanent employment.

[197] The claimant also led evidence of her job searches, including numerous inquiries and applications for Whistler area jobs, which she tracked on a spreadsheet, exhibited at trial. While some of these inquiries led to interviews, she has not been successful in adding to her working hours.

[198] I find that the claimant has been diligently pursuing employment opportunities as detailed in her evidence.

[199] The Court heard a great deal of evidence about a job opportunity as a restaurant server, to which I have already alluded. The respondent did not provide any calculations to show how an income of \$60,000 could be earned by working part-time at this restaurant. The evidence at trial was that on average, \$56,000 plus cash tips could be earned per year by a server working four to five days per week. During the slow season, the evidence was that servers took longer holidays, and during the busy season, they worked more than five days per week. This is an unrealistic schedule for a single parent of a young child. In any event, given the prospective employer's close relationship with the respondent and the difficulty for a single parent with no family support taking on an evening job which would at best be part-time, I find that it is reasonable for the claimant to choose not to pursue this employment. I impute no income to her based on the restaurant server job.

[200] I find the claimant's income for support purposes is as set out in her T1 General tax return for 2024, or \$29,524.

- [201] The claimant's position on her income going forward is that she is in agreement with an imputed income to her of \$68,000 (Canadian) if she is permitted to relocate with Z to the U.S.
- [202] I did not understand the respondent to take issue with the amount of imputed income that the claimant suggested should be used if relocation is permitted.

The Respondent's Income

Introduction

- [203] In *Duffy v. Duffy*, 2009 NLCA 48 at para. 54, the Court stated that a parent should not be permitted to avoid child support payments by creating a financial quagmire that interferes with the ability of the Court to determine income.
- [204] To a certain extent, this has occurred here. The respondent urges me to ignore the Guidelines and to follow his own method of income calculation. Despite the challenges associated with imputing the respondent's income, I have begun with his T1 general tax return and then added back the appropriate amount of the deduction taken by the respondent for the business use of the home and for the business use of the vehicle.

Calculation of income from self-employment

- [205] The claimant stressed in her submissions that an income of \$95,000 had been imputed to the respondent in previous provincial court proceedings involving his other former spouse, and that Z should benefit from child support based on this income, as do his other two children.
- [206] The respondent submitted that the only imputed income for him was under an order by Provincial Court Judge St. Pierre, of \$65,000, which had previously been in place. He submitted that the \$95,000 was not an imputed income, but his income was as Judge Brownstone found it to be.
- [207] As much as it would simplify matters to accept the same income figure used in prior proceedings, I find that \$95,000 is not the appropriate figure for the respondent's income for 2024 and going forward. In 2022 and into 2023, the respondent was earning an increased amount from performing immunizations, in the wake of the COVID-19 pandemic wave of vaccinations. That work is no longer available to him despite his efforts to reach out to the health authorities on more than one occasion, with the most recent outreach being in 2024. I accept the respondent's evidence that Judge Brownstone's order was made with that income in mind. I therefore cannot find that it is the appropriate starting place for his income from 2024 forward.

- [208] The respondent's 2024 business income was \$76,684.08 and his Line 15000 income was \$29,266.45. In 2023, his business income was \$87,713.43, and his Line 15000 income was \$50,474.05. In 2022, his business income was \$118,306.26, and his Line 15000 income was \$74,483.63. I was not taken to a breakdown of the respondent's immunization remuneration for 2022 and 2023. In his submissions, he stated that he earned \$124,000 over two years. I infer from the numbers that more of that was earned in 2022 than in 2023.
- [209] There was some question as to the way in which the respondent recorded and kept track of his business income and expenses. At the time of his discovery, in a portion of the transcript which was read in at trial, the respondent stated that he had no bookkeeper, as she had retired some time earlier. The date of the bookkeeper's retirement was not in evidence. When questioned about the increase in business expenses from 2022 to 2023, and the resulting drop in his Line 15000 income, the respondent mentioned the bookkeeper's decision to allocate things to various categories. The claimant submitted that this amounted to an admission that the respondent artificially inflated his expenses so as to decrease his Line 15000 income and thus the amount of tax that he must pay, and that he now seeks to pay child support based on this artificially deflated number.
- [210] At trial, the Court heard evidence from the respondent's bookkeeper, Ms. Walker, who testified that she had prepared the respondent's taxes since 2021. It was not clear to me if this was the same bookkeeper that retired in or around 2023. The respondent was not cross-examined on this discrepancy. While I do not find that the discrepancy reflects on his credibility, or that of Ms. Walker, who struck me as an honest witness doing her best to clearly explain the paperwork in front of her, I cannot ignore the murkiness surrounding the respondent's accounting records.
- [211] In any event, it was clear that Ms. Walker was not preparing an audit; she was simply taking the records at face value as presented by the respondent and doing her best to explain them to the Court. She testified that she did not see receipts, for example for rental income, and just took the information that was provided. She also said she was not required to look for red flags when performing a personal tax return; she had to essentially trust her client. Her standard practice was to give their materials a quick once-over for significant outliers. She observed that the respondent self-reported the amount of cash he would receive, drafted his own profit and loss statement, and handled his own bookkeeping, and she would just plug things in to do his taxes. She did not check, verify, or audit the information.
- [212] According to Ms. Walker, to present his income for Guidelines calculation purposes, the respondent would take his gross business income, and then deduct 100% of the "necessary and exclusive business expenses" and 50% of the vehicle capital cost allowance and maintenance. He described this as a "deduction method", which he felt was one of several ways that he could go about calculating and presenting income.

- [213] The claimant's submission, should I not accept an imputed income of \$95,000, was that the respondent's method of income calculation was confusing and went against the system set up by s. 16 of the Guidelines for determining spousal income, which directs the Court to begin with Line 15000 income.
- [214] I agree with the claimant. The appropriate starting place for the respondent's income is his T1 general tax return with an appropriate add-back for certain of the personal benefit of business expenses, as contemplated by the Guidelines.
- [215] Further and in any event, I do not accept that a 45% use of home for business is appropriate. The claimant testified that in the five-and-a-half years she lived with the respondent, a client used the upstairs area of the home on no more than two or three occasions. The respondent's evidence was that he worked in Vancouver between two to four days per week. He resisted providing an estimate of what percentage of his work was online versus in person. Similarly, the amounts deducted for the business use of the respondent's automobile--as well as the associated capital cost allowance--are too high given the uncertainty around how often the respondent commutes to Vancouver or sees clients at home. Whether these deductions are reasonable from an income tax point of view, is not determinative. Section 19(2) of the Guidelines confirms that for the purpose of paragraph 19(1)(g), "the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the Income Tax Act".
- [216] The respondent was cross-examined on the business use of home deduction. He testified that he and his accountant came up with the number together; that he suggested 50% and she countered with 45% as this figure was "less likely to be audited". The respondent recognized that there was a grey area here if he were to be audited, but testified that given his method of presenting his income for child support purposes, it was not relevant to Z. I have already stated I do not accept the respondent's method.
- [217] In summary, the deductions for the business use of the respondent's home, automobile and associated Capital Cost allowance is inflated, and there should be an add-back for these amounts: *L.M. v. S.M.*, 2025 BCSC 402 at paras. 33-36, 47-50. On the evidence, I cannot determine exactly what proportion of the respondent's work was being done at home, in a clinic, in Vancouver, or in Whistler. I find that it is reasonable for the respondent to deduct 25% of the amounts he claimed on his tax return with the remaining 75% being added back to his income and grossed up accordingly.
- [218] Doing the best I can with the aid of the respondent's 2024 T1 General Tax return, but without the aid of expert accounting evidence, I find that the amount of these add-backs is \$26,103, or 75% of the deductions taken for motor vehicle expenses, capital cost appreciation, much of which was tied to his car as set out in Motor Vehicle tax worksheet, and business use of home. This figure must be grossed up and added to the respondent's guidelines income.

Underemployment - imputation of income

- [219] The respondent gave evidence that he is always hustling and looking for more work. On discovery, he said that he was hopeful that he would obtain more income in the near future. He stated that, when he is not with clients, he spends time improving his website and seeking out new opportunities, although he also testified that he is "not a big social media person". He testified as to working for a clinic once per week in an online capacity for a short time. On cross-examination, he stated that he currently has six or seven regular personal training clients; less than one new client per month; and one or two new naturopathic clients per month, including weight management clients, which is an area in which he specializes. He also testified that he had recently been in discussions to work as a ski instructor. He formerly worked as an acupuncturist but let his certification lapse. He testified as to focussing on weight management, but stated that he had stopped running group classes, even though they were where a lot of his current and long-term clients originated. He also stated that he obtained half of his new clients from referrals and half from his website.
- [220] The claimant observed that although the respondent testified as to his popularity as a personal trainer, he seemed to be doing little to increase that client base. Nevertheless, the respondent testified that he is working to his full capacity.
- [221] In respect of the murkiness of the respondent's financial affairs, the claimant pointed to his failure to explain the alleged inconsistency between his actual use of the FFH and his practice of writing off 45% of it for business purposes, his failure to explain multiple transfers and deposits into his account, his failure to account for the funds received from the sale of various assets of his business despite requests in the litigation process, and his evidence that he did not keep track of his personal or business expenses and that he mixed both through his accounts.
- [222] The respondent objected to questions about unexplained deposits, stating that he made it clear that he required advance warning as to any particular line items about which there would be questions. That is not, however, the test. Litigants in family law proceedings are expected to be transparent about their finances. The respondent had the opportunity, when presenting his own case and on cross-examination, to explain any financial documents that were not clear on their face including any cash income. He failed to do so in a clear and coherent manner, even when he was directly asked about key inconsistencies. The testimony of his accountant projected further responsibility onto him for the state of his financial records, as she stated that he kept track of everything himself. In the circumstances, I find a certain amount of murkiness existed with respect to the respondent's financial affairs, and I accept the claimant's evidence about his failure to address it at trial. This murkiness, whether due to the respondent's state of disorganization or not, factored into my decision to impute income to him.

- [223] I accept that in 2022 to 2023, the respondent earned income from immunizations that is no longer available. He stated, when asked about his parenting during that time, that it was high paying work at \$140 per hour, thus only requiring him to work an extra one to two days per week. He has not, however, succeeded in replacing that income through other means, such as by using social media to obtain more client referrals, seeking more personal training work for which he testified he is more popular, or restarting the group classes which brought in many of his current long-term clients. That being said, I observe that he reached out to a number of clinics and was successful in joining one, and had already seen some patients, as of May 2025. He also stated that he intended to offer in-person spots at another clinic he was associated with, in January 2026. Presumably, these efforts will result or have resulted in additional income for 2025 to 2026.
- [224] It was not made clear to me, however, and the respondent did not lead any evidence, as to why he did not make more efforts like this in 2024. At minimum, once the immunization work dried up at some point in 2023, the respondent should have had time to work one additional day per week, albeit perhaps not at the high hourly rate of the immunization work.
- [225] The respondent's 2023 Line 15000 income was about \$50,000. Assuming he was working five days per week, 20% of that amount is \$10,000. Adding \$10,000 of imputed income brings the respondent's income for support purposes to \$73,917.
- [226] I find that it is reasonable to continue to use this number for the respondent's income going forward, unless his T1 General Tax return for 2025 reveals a Line 15000 number which, when 75% of his car and business use of home deductions is added back and grossed up, results in an income of more than \$74,000. That would represent that the respondent was working at closer to his full capacity, and thus imputation of income would not be required. In that case Line 15000 income, plus add-backs, should be used instead. Either party are of course at liberty to bring an application for variation on the basis of a material change in the respondent's income going forward.
- [227] In the alternative, I observe that another basis to impute income to the respondent, is the median wage for a naturopath in B.C., which is \$71,500, according to the evidence that the respondent himself led at trial. The respondent led evidence that he also received \$4,000 in rent in 2024. Adding those sums results in an income of \$75,500. This is close to the number arrived at through imputation and attribution above. If I am found to be in error, as to the imputation and attribution amounts as above, I find that \$75,000 is a reasonable number for the respondent's income for the time period in question.

- [228] Once the parties' 2025 tax information is available, I expect them to exchange this information with a view to determining the appropriate support amounts going forward. The respondent argued for a July 1 date of annual financial disclosures, including U.S. and Canadian employment income, tax returns, notice of assessments and self employment income and the claimant suggested June 30. I accept June 30 as a reasonable date, as it is not a statutory holiday.
- [229] If necessary, the parties will agree on an accounting or legal expert to assist them in obtaining a "Divorcemate" or similar calculation for the respondent's income, given that it will have to be based on his Line 15000 income, with an add-back of 75% of deductions related to his home and vehicles. The cost for this financial or legal assistance will be paid by the respondent.

Spousal support

- [230] The claimant asked for retroactive spousal support only, unless she is unsuccessful on relocation. If relocation is permitted, she did not seek prospective support. I have determined that relocation ought to be permitted and so there is no claim for spousal support going forward that needs to be determined.

The Parties' Positions

- [231] The claimant submitted that she is entitled to retroactive spousal support on both a compensatory and non-compensatory basis, from the date of separation on May 7 2023. She submitted that retroactive high-range spousal support based on an income of \$95,000 for the respondent, and actual incomes for her, results in payments for retroactive spousal support owing of some \$48,000 from May 2023 to September 2025.
- [232] The respondent concedes that he has paid no spousal support. Although he also conceded that there was a basis for two years of compensatory spousal support, he argued that any entitlement should be offset by the financial loss that the respondent suffered related to the marriage. He also submitted that he does not have the ability to pay, and that child support should be prioritized lest he and his other children suffer hardship. The respondent submitted that the "independent" model of marriage, as explained in *Bracklow v. Bracklow*, 1 S.C.R. 420, 1999 CanLII 715 (S.C.C.) at para. 30, applies to the parties' marriage. He submitted, and his evidence at trial was, that the claimant was aware that the respondent was not agreeing to support her financially as a part of their marriage relationship, and that he made it clear that he was expecting her to work from the outset.
- [233] It was also the respondent's position, if I understand it correctly, that, in any event, the claimant ought not to receive any spousal support between May 7 2023 and December 1 2023, during which time she was living at least intermittently in the FFH or with the respondent's mother, and during which time she had access to the parties' shared Amex account which the respondent paid every month.

Legal Framework

- [234] The Court of Appeal discussed the three bases for entitlement to spousal support in *Zacharias v. Zacharias*, 2015 BCCA 376:
- [26] Compensatory entitlement will arise where, as a result of the parties' roles during the marriage, one spouse has suffered economic disadvantage or has conferred economic advantages on the other. Most often, such entitlement will arise where one spouse has sacrificed career opportunities in order to take on more of the family's household or child-rearing responsibilities. Upon the dissolution of the marriage, the spouse who has given up opportunities may be entitled to spousal support, either to compensate for diminished earning capacity, or to share in the augmented earning capacity of the other spouse. The main goal of compensatory spousal support is to provide for an equitable sharing of the economic consequences of the marriage (see *Moge v. Moge*, 1992 CanLII 25 (SCC), [1992] 3 S.C.R. 813 at 858-66).
- [27] Non-compensatory support entitlement focuses on the needs of the spouses and on their respective means. It is based on the idea that spouses, by virtue of marriage, have some ongoing responsibility to care for one another. The degree to which non-compensatory principles will apply will depend on a close examination of not only the means and needs of the spouses, but also of the nature of the marital relationship and its duration (see *Bracklow v. Bracklow*, 1999 CanLII 715 (SCC), [1999] 1 S.C.R. 420, particularly at para. 53).
- [28] Finally, spousal support obligations may arise out of agreements entered into between the parties. There is no contractual basis to the support obligations in this case.
- [235] As in *Zacharias*, there is no basis for a contractual obligation to spousal support in this case. If the respondent intended to suggest that the parties had made an agreement that the claimant would contribute to the marriage in a financially equal manner after her maternity leave, I find that this agreement has not been made out.

Analysis

- [236] I find that the claimant is entitled to spousal support on a compensatory basis. She suffered economic disadvantages from the marriage: namely, moving from the U.S. to Canada, where she was unable to work for a time due to her immigration status, while at the same time having a child: this was her economic reality, whatever the respondent's expectations may have been. When the parties' marriage ended, the claimant had an earning capacity that was far less than the respondent's, in an expensive community with scarce housing. She is, however, young and employable. While she is entitled to some support, I find that a time period of two years is appropriate.
- [237] I find that spousal support ought to have been paid from December 1, 2023. It was at that date that the claimant no longer had access to the financial arrangements that had sustained her and the parties' child throughout the marriage. The respondent has not taken

me to any caselaw which suggests that the claimant was obliged to rely on an excluded asset (her nest egg) during a time when she was entitled to spousal support. Indeed, the evidence was that at the time the credit card access was removed, the respondent still was not aware of the claimant's nest egg. I have already found that the respondent is entitled to half of the increase in the value of this asset during the marriage in any event.

- [238] The appropriate range of spousal support given the parties' incomes is from \$0 at the low end, to \$352 at the high end. This range takes into account the respondent's child support payments for his other two children which I have assumed will not be clawed back on any future application by him to reduce those payments. I observe, however, that had the respondent been unable to afford these payments, based on as he says they were on an inflated income, it was open to him to apply to have them reduced.
- [239] I have considered the respondent's hardship argument in this respect. I have specifically considered the reasoning in *D.B.S. v. S.R.G.*, 2006 SCC 37 at paras. 114-115, which stands for the proposition that a broad consideration of hardship is appropriate in determining whether a retroactive award is justified. This may include whether a payor has other family obligations to meet and/or other children to support. *D.B.S.* also highlighted that, while this may be the case in the child support context, the same considerations apply to questions of both spousal and child support: at para. 76.
- [240] Taking all of this into account, I find that an appropriate amount of spousal support for the period from December 1 2023 to December 1 2025 is \$250 per month. This means that the respondent owes the claimant \$6,000 in spousal support.

Child Support

- [241] From separation until the end of December 2023, when the parties lived off-and-on under one roof, the respondent paid no child support.
- [242] He began paying interim child support of \$716 per month in December 2023, by agreement, based on the respondent's 2022 Line 15000 income. The respondent submitted that his actual income at the time was much lower.
- [243] As noted, starting in May 2024, the respondent reduced his \$716 payments to \$470 per month, on the basis that the parties had embarked on a shared parenting arrangement. The claimant characterized this reduction as "unilateral", and the respondent conceded as much, but said that he offered the claimant the chance to discuss it, which she refused.
- [244] In his closing submissions, the respondent sought an order that commencing July 1 2025, he pay table support for one child based on shared parenting, with no retroactive support unless there was overpayment, which could be credited against spousal support if any.

- [245] With regard to retroactive support, the respondent said that an award of retroactive support would lead to hardship for himself and thus be of no benefit to Z. He has two other children to support, and it is evident that he wishes and intends to benefit all three of them.
- [246] I find it appropriate that the respondent pay support to the claimant from December 2023 onwards, based on an income for him of \$73,917 and on the claimant's Line 15000 income which, as set out in her T1 General Tax Return for 2024, was \$29,524.
- [247] The resulting child support monthly payment is \$705 for the five months from December 2023 to May 2024, during which time Z lived primarily with the claimant, for a total of \$3,525. From May 2024 onwards, this amount is \$431 per month under the parties' shared parenting arrangement. To February 1 2026 (21 months) this amount totals \$9,051. I observe that these amounts are close to the amounts that the respondent has actually paid.
- [248] Starting on March 30 2026, or the date on which she relocates to New Jersey, the claimant's income is to be imputed to her at \$68,000, with Z residing with her the majority of the time, which results in a payment of \$696 monthly.
- [249] There will have to be a set-off of those amounts which the respondent has paid in child support through this period, which I find to have been as follows:
- a) \$716 monthly from December 1, 2023 to May 1, 2024 x 5 months = \$3,580;
 - b) \$470 monthly from May 1, 2024 to February 1, 2026 x 21 months = \$9,870.
- [250] Setting these amounts off against the amounts paid by the respondent leaves an overpayment of \$874.
- [251] From February 1 2026 until the claimant relocates, the respondent will pay the monthly amount of \$431. After relocation, the child support owed will increase to \$696 per month.

Section 7 Special or Extraordinary Expenses

- [252] The parties agreed on sharing s. 7 special or extraordinary expenses ("s. 7 expense") proportionate to their incomes, but disagreed on what expenses should be presumptively counted as special expenses, and what ought to be shared only if agreed between the parties. On balance, I accept, for the most part, the respondent's position on the s. 7 expenses, as detailed below. Neither party is seeking reimbursement for retroactive s. 7 expenses and so I need not examine that issue.
- [253] The respondent submitted, and I find, that Z's recreational sports and extracurriculars like dance lessons, community sports, and ski trips are ordinary expenses. They are typically only s. 7 expenses if participation goes beyond the level of the average child, *Clarke v. Clarke*, 2014 BCSC 824 at para. 54. There is no evidence of that here. Z's Whistler ski pass and ski school will also be included as an ordinary, and not special expense. Each parent is free to pay for extracurricular expenses for Z on their own parenting time.

- [254] The claimant also sought a term that "extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs" be included in presumptive s. 7 expenses. I agree that such expenses would qualify as s. 7 expenses, but I find that the parties ought to agree on any such expenses. The parties are of modest means. At present, for example, private schooling in either Canada or the U.S. is likely out of reach.
- [255] On balance, then the s. 7 expenses are to be dealt with based on the respondent's suggested order with several additions as follows:
- a) Presumptive s. 7 expenses are medical expenses, including insurance premiums, and health-related expenses exceeding insurance reimbursement by at least \$100 annual (including orthodontic treatment); professional counselling by a psychologist, social worker, psychiatrist or any other person; physiotherapy; occupational therapy, speech therapy; and prescription drugs, hearing aids, glasses and contact lenses;
 - b) Childcare expenses for work or education by either party are presumed s. 7 expenses subject to a right of first refusal to the other parent, for parenting time over three hours in lieu of paid childcare.
 - c) Extraordinary expenses for extracurricular activities or educational programs, including primary or secondary school education, are only s. 7 expenses if agreed to in advance by the parties

Other Orders Sought

- [256] There are other orders sought that have not been specifically addressed above.

Notification of Location

- [257] The respondent submits that he still does not know the location of Z's home in Squamish, and that once the claimant left the safe house environment, where the policy of the organization was to maintain confidential addresses, he has a right to know where his daughter is living. There is already an order in place requiring consent to travel outside of B.C., which the parties have been following.
- [258] I find that given the past episodes of family violence, the claimant is justified in retaining confidentiality over her Squamish address, such that the exception in s. 18.8(3) of the DA applies. It would appear that there is no such concern about the address in New Jersey, which the respondent already knows. In addition, the claimant does not object to informing the respondent of Z's whereabouts when out of B.C. and the parties have a travel order in place. Accordingly, no order is required on this point.

Divorce

[259] I grant the parties' divorce, on the basis that they have been living separate and apart for over one year, to take effect on the 31st day from the date of this judgment.

Summary of Conclusions

[260] In summary, the following sums are due from each party to the other.

Property Division

Amounts due from Claimant to Respondent

Amounts due from Respondent to Claimant

One-half of the increase of the "nest egg" accounts, in \$CAD:

\$5,304.23

One-half of the value of the increase of the FFH

\$57,389.50

One-half of TD Canada Trust Chequing account XXXXX621

\$7,367.85

One-half of the amount in savings account 5525

\$3,346.88

Total

\$12,672.08

Total

\$60,736.38

[261] Thus, the amount due from respondent to claimant is \$48,064.30.

Support

[262] The respondent owes the claimant the following retroactive spousal support, offset by an overpayment of child support:

Retroactive spousal support from December 1, 2023 to December 1, 2025 at \$250 x 24 months.

\$6,000

Less overpayment of child support

\$874

Total

\$5,126

Relocation

[263] The claimant is permitted to relocate to New Jersey on March 28, 2026, or such other date as the parties may agree. The respondent's parenting time will be as set out in the claimant's plan, with the exception of an additional week during Z's summer break, for a total of seven weeks of parenting time for the respondent in the summertime this year and thereafter, during which the claimant will be entitled to three two-day blocks of parenting time as set out above.

Costs

[264] The claimant has succeeded on relocation. She has failed, however, in her property law claim over Hawaii and her primary submission to impute income to the respondent. Her retroactive child support claim resulted in an adjustment downwards of the amounts paid by the respondent, in the amount of \$874. Her retroactive spousal support claim was allowed at \$250 for two years. I have largely accepted the respondent's position on s. 7 expenses.

[265] This divided success points to an order that each party bear their own costs, subject to an opportunity for the parties to make submissions, if they choose, as to why a different costs order is more appropriate.

[266] The parties are therefore at liberty to file brief written submissions to my attention to deal with costs. If needed, these submissions will follow the following schedule:

- a) The claimant is to file her submissions within 30 days of these reasons.
- b) The respondent will have 30 days to respond.
- c) If the claimant does not choose to file submissions, the respondent has 45 days from the date of these reasons to file his submissions as to costs.
- d) In either case, if the claimant wishes to reply, this must be filed within 14 days of the filing of the respondent's submissions.

[267] All written submissions are to be on the topic of costs only, and must be double-spaced in 12-point font. They are not to exceed ten pages, in the case of the parties' initial submissions, and five pages, in the case of the claimant's reply, if any.

[268] I observe that these reasons contain several financial findings and numerical calculations. Should the parties find errors in the court's arithmetic or transcription of numbers, they are at liberty to bring those errors to my attention within 14 days of these reasons. This can be done in writing through the registry, with a brief summary of the party's view of these errors, with a copy to the other party. I will consider any such submissions and issue a corrigendum to these reasons if required.

"Lawn J."

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